

REMARKS

Claims 14 – 18 and 29 are pending in the application. Applicants have amended claim 14 to more clearly claim Applicants' invention. Applicants have also canceled claims 25 – 28 because they are drawn to non-elected species.

As an initial matter, Applicants acknowledge the Examiner's assertion that Applicants have allegedly not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. § 120.

The Examiner has rejected claims 1 – 18 and 29 under 35 U.S.C. § 103 as allegedly unpatentable over Moloney (Published U.S. Application 2002/0088025) in view of Deckers (Published PCT Application WO98/53698). Applicants respectfully traverse.

Applicants submit that the Moloney reference is not a competent reference for the purposes of an obviousness rejection under 35 U.S.C. § 103(a) since this application was filed on July 3, 2001; that is, after the enactment of the amendments to 35 U.S.C. § 103 under the American Inventors Protection Act (AIPA) of 1999.

As amended, 35 U.S.C. § 103(c) states:

Subject matter developed by another person, which qualifies as prior art only under subsection (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Applicants assert that the claimed invention and the Moloney patent were commonly owned by SEMBIOSYS GENETICS, INC. at the time the claimed invention was made. In support of this assertion, Applicants submit herewith a copy of the assignment document(s) for the Moloney application, and for the instant application. Thus, under the new law, the Moloney patent may not be held as prior art, under 35 U.S.C. § 103, against the claimed invention.

Since the Moloney reference is not a competent reference for purposes of 35 U.S.C. § 103 for the reason enunciated above, and because the secondary reference (Deckers) does not

by itself render the claims obvious, Applicants assert that the rejection has been overcome. Reconsideration and withdrawal of the § 103 rejection is respectfully requested.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, are presented, with an appropriate defined status identifier.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.


The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 7/11/03

FOLEY & LARDNER
Washington Harbour
3000 K Street, N.W., Suite 500
Washington, D.C. 20007-5143
Telephone: (202) 672-5404
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By 
for Stephen A. Bent Reg. # 48,753
Attorney for Applicant
Registration No. 29,768

ASSIGNMENT

I,

Bipin K. Dalmia

residing at

7353 Mannix Court
San Diego, CA 92129, USA

for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, do hereby sell and assign to Syngenta Participations AG, a company organized under the laws of the Swiss Confederation, having a place of business at Schwarzwaldallee 215, Basel, Switzerland 4058, its successors, assigns and legal representatives, all my right, title and interest, which includes the right to and full benefit of such priorities as may now or hereafter be granted to me by any applicable local or foreign laws or by treaty, including any international convention for the protection of industrial property, in and for the United States, its territories and possessions, as well as all foreign countries, in and to the invention entitled:

PREPARATION OF THIOREDOXIN AND THIOREDOXIN REDUCTASE ON OIL BODIES

jointly invented by me and Maurice M. Moloney and described in the following patent application(s):

United States Patent Application No. 09/897,425, filed on July 3, 2001

Including (1) said United States Provisional Patent Application and all United States and/or foreign patent applications claiming the benefit of priority thereof, (2) said United States Patent Application and all continuations and divisions thereof (including further continuations and divisions such as, but not limited to, continuations of continuations and divisions of continuations), (i) all United States Letters Patent which may be issued and/or granted on all such applications, (ii) all applications for reissues and extensions of and reexamination certificates for all such United States Letters Patent and (iii) all reissues and extensions and reexamination certificates issued for all such United States Letters Patent, and (3) said International Patent Application and all national stage applications, which may be filed in the United States and/or any foreign countries, claiming the benefit of priority thereof (including all continuations, divisions, further continuations and divisions, etc., of said International Patent Application and all continuations, divisions, further continuations and divisions, etc., of any such national stage applications), (i) all foreign Letters Patent which may be issued and/or granted on all such applications, and (ii) all foreign patent or other intellectual property rights

(such as, but not limited to, utility models) derivable from said International Patent Application in accordance with any applicable foreign laws or by treaty, said interest being the entire ownership of said invention and all of said applications, United States Letters Patent (including reissue Letters Patent), extensions and reexamination certificates, foreign Letters Patent, and foreign patent or other intellectual property rights derivable from said International Patent Application to be held and enjoyed by Syngenta Participations AG and its successors and assigns to the full end of the terms to which said United States Letters Patent (including reissue Letters Patent), extensions and reexamination certificates, foreign Letters Patent, and foreign patent or other intellectual property rights derivable from said International Patent Application may be granted and/or issued, as fully and entirely as the same would have been held and enjoyed by me if this sale, assignment, and transfer had not been made;

And I hereby agree to sign and/or execute any further documents and/or instruments which may be necessary, lawful, and proper in and/or for the filing and/or prosecution of said applications for United States Letters Patent (including reissue Letters Patent), extensions and reexamination certificates, foreign Letters Patent, and foreign patent or other intellectual property rights derivable from said International Patent Application and/or the granting and/or issuance thereof and/or to otherwise secure title to said invention and all of said applications, United States Letters Patent (including reissue Letters Patent), extensions and reexamination certificates, foreign Letters Patent, and foreign patent or other intellectual property rights derivable from said International Patent Application in Syngenta Participations AG and its successors and assigns.

Signed this 4th day of July, 2003 by

Bipin K. Dalmia
BIPIN K. DALMIA

ASSIGNMENT

SYNGENTA PARTICIPATIONS AG, a company organized under the laws of the Swiss Confederation, having a place of business at Schwarzwaldallee 215, Basel, Switzerland 4058, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, does hereby sell and assign to **SEMBIOSYS GENETICS, INC.**, a company organized under the laws of the Province of Alberta, having a place of business at Bay #110, 2985-23rd Avenue, N.E., Calgary, Alberta, Canada T1Y7L3, its successors, assigns and legal representatives, all right, title and interest, which includes the right to and full benefit of such priorities as may now or hereafter be granted to **SYNGENTA PARTICIPATIONS AG**, by any applicable local or foreign laws or by treaty, including any international convention for the protection of industrial property, in and for the United States, its territories and possessions, as well as all foreign countries; in and to the invention entitled:

PREPARATION OF THIOREDOXIN AND THIOREDOXIN REDUCTASE ON OIL BODIES

described in the following patent application(s):

United States Patent Application No. 09/897,425, filed on July 3, 2001, and assigned to

SYNGENTA PARTICIPATIONS AG by joint inventor Bipin K. Dalmia

including (1) said United States Provisional Patent Application and all United States and/or foreign patent applications claiming the benefit of priority thereof, (2) said United States Patent Application and all continuations and divisions thereof (including further continuations and divisions such as, but not limited to, continuations of continuations and divisions of continuations), (i) all United States Letters Patent which may be issued and/or granted on all such applications, (ii) all applications for reissues and extensions of and reexamination certificates for all such United States Letters Patent and (iii) all reissues and extensions and reexamination certificates issued for all such United States Letters Patent, and (3) said International Patent Application and all national stage applications, which may be filed in the United States and/or any foreign countries, claiming the benefit of priority thereof (including all continuations, divisions, further continuations and divisions, etc., of said International Patent Application and all continuations, divisions, further continuations and divisions, etc., of any such national stage applications), (i) all foreign Letters Patent which may be issued

and/or granted on all such applications, and (ii) all foreign patent or other intellectual property rights (such as, but not limited to, utility models) derivable from said International Patent Application in accordance with any applicable foreign laws or by treaty, said interest being the entire ownership of said invention and all of said applications, United States Letters Patent (including reissue Letters Patent), extensions and reexamination certificates, foreign Letters Patent, and foreign patent or other intellectual property rights derivable from said International Patent Application to be held and enjoyed by **SEMBIOSYS GENETICS, INC.** and its successors and assigns to the full end of the terms to which said United States Letters Patent (including reissue Letters Patent), extensions and reexamination certificates, foreign Letters Patent, and foreign patent or other intellectual property rights derivable from said International Patent Application may be granted and/or issued, as fully and entirely as the same would have been held and enjoyed by **SYNGENTA PARTICIPATIONS AG** if this sale, assignment, and transfer had not been made.

Signed this


7th

day of

July

, 2003

by


SYNGENTA PARTICIPATIONS AG

UNITED STATESASSIGNMENT

WHEREAS I, MAURICE M. MOLONEY, whose full post office address is 34 Edgebrook Cove N.W., Calgary, Alberta, T3A 5N5, Canada, have invented certain new and useful improvements in an invention entitled **PREPARATION OF THIOREDOXIN AND THIOREDOXIN REDUCTASE ON OIL BODIES** for which an application for United States Letters Patent was filed on July 3, 2001 as serial No. 09/897,425.

AND WHEREAS SEMBIOSYS GENETICS INC., a corporation of the Province of Alberta having a place of business at Bay #110, 2985-23rd Avenue N.E., Calgary, Alberta, Canada, T1Y 7L3, has acquired from me the whole right, title and interest for the United States of America and all other countries, at least as of the date of the invention, in and to the said invention and in and to any Letters Patent that may be obtained therefor, and in and to said application,

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of all of which is hereby acknowledged, I, MAURICE M. MOLONEY, by these presents confirm that I have sold, assigned and transferred and do hereby sell, assign and transfer unto the said SEMBIOSYS GENETICS INC., the full and exclusive right to the said invention in the United States of America and the entire right, title and interest in and to any and all Letters Patent which may be granted therefor, together with the right to claim the benefit of the right of priority provided by the International Convention for the Protection of Industrial Property based on said application for United States Letters Patent.

I agree that I will without further consideration do all such things and execute all such documents as may be necessary or desirable to obtain and maintain patents for said invention and for additions and modifications thereto in any and all countries, and to vest title thereto in said assignee, his successors, assigns and legal representatives or nominees.

- 2 -

I hereby authorize and request the Commissioner of Patents and Trademarks to issue said Letters Patent to the said SEMIOSYS GENETICS INC., the assignee of the entire right, title and interest in and to the same, for his sole use and benefit, and for the use and benefit of his successors and assigns, to the full end of the term for which Letters Patent may be granted as fully and entirely as the same would have been held by me had this assignment and sale not been made.

The undersigned hereby grants the firm of Foley & Lardner (Washington Harbour, 3000 K Street N.W., Suite 500, Washington, D.C., U.S.A. 20007-5143) the power to insert on this assignment any further identification which may be necessary or desirable in order to comply with the rules of the United States Patent and Trademark Office for recordation of this document.

SIGNED this 9th day of July, 2003, at Calgary, Alberta


Witness


MAURICE M. MOLONEY

WITNESS STATEMENT

I, Kimberly Irving, whose full post office address is _____
_____ declare and say:

That the signature as shown above is the signature of Maurice M. Moloney.

Signed at Calgary, Alberta this 9th day of July, 2003.


Signature

ASSIGNMENT

Bipin K. Dalmia

residing at

7353 Mannix Court
San Diego, CA 92129, USA

for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, do hereby sell and assign to Syngenta Participations AG, a company organized under the laws of the Swiss Confederation, having a place of business at Schwarzwaldallee 215, Basel, Switzerland 4058, its successors, assigns and legal representatives, all my right, title and interest, which includes the right to and full benefit of such priorities as may now or hereafter be granted to me by any applicable local or foreign laws or by treaty, including any international convention for the protection of industrial property, in and for the United States, its territories and possessions, as well as all foreign countries, in and to the invention entitled:

THIOREDOXIN AND THIOREDOXIN REDUCTASE CONTAINING OIL BODY BASED PRODUCTS

jointly invented by me and others described in the following patent application(s):

United States Patent Application No. 09/897,898, filed on July 5, 2001

including (1) said United States Provisional Patent Application and all United States and/or foreign patent applications claiming the benefit of priority thereof, (2) said United States Patent Application and all continuations and divisions thereof (including further continuations and divisions such as, but not limited to, continuations of continuations and divisions of continuations), (i) all United States Letters Patent which may be issued and/or granted on all such applications, (ii) all applications for reissues and extensions of and reexamination certificates for all such United States Letters Patent and (iii) all reissues and extensions and reexamination certificates issued for all such United States Letters Patent, and (3) said International Patent Application and all national stage applications, which may be filed in the United States and/or any foreign countries, claiming the benefit of priority thereof (including all continuations, divisions, further continuations and divisions, etc., of said International Patent Application and all continuations, divisions, further continuations and divisions, etc., of any such national stage applications), (i) all foreign Letters Patent which may be issued and/or granted on all such applications, and (ii) all foreign patent or other intellectual property rights

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And I hereby agree to sign and/or execute any further documents and/or instruments which may be necessary, lawful, and proper in and/or for the filing and/or prosecution of said applications for United States Letters Patent (including reissue Letters Patent), extensions and reexamination certificates, foreign Letters Patent, and foreign patent or other intellectual property rights derivable from said International Patent Application and/or the granting and/or issuance thereof and/or to otherwise secure title to said invention and all of said applications, United States Letters Patent (including reissue Letters Patent), extensions and reexamination certificates, foreign Letters Patent, and foreign patent or other intellectual property rights derivable from said International Patent Application in Syngenta Participations AG and its successors and assigns.

Signed this 4th day of July, 2003

by

Bipin K. Dalmia
BIPIN K. DALMIA

ASSIGNMENT

SYNGENTA PARTICIPATIONS AG, a company organized under the laws of the Swiss Confederation, having a place of business at Schwarzwaldallee 215, Basel, Switzerland 4058, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, do hereby sell and assign to **SEMBIOSYS GENETICS, INC.**, a company organized under the laws of the Province of Alberta, having a place of business at Bay #110, 2985-23rd Avenue, N.E., Calgary, Alberta, Canada T1Y7L3, its successors, assigns and legal representatives, all right, title and interest, which includes the right to and full benefit of such priorities as may now or hereafter be granted to **SYNGENTA PARTICIPATIONS AG**, by any applicable local or foreign laws or by treaty, including any international convention for the protection of industrial property, in and for the United States, its territories and possessions, as well as all foreign countries, in and to the invention entitled:

THIOREDOXIN AND THIOREDOXIN REDUCTASE CONTAINING OIL BODY BASED PRODUCTS

described in the following patent application(s):

United States Patent Application No. 09/897,898, filed on July 5, 2001, and assigned to

SYNGENTA PARTICIPATIONS AG by joint inventor Bipin K. Dalmia

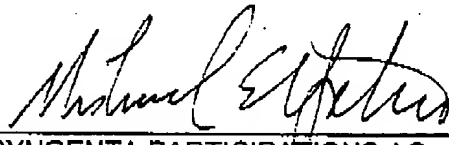
including (1) said United States Provisional Patent Application and all United States and/or foreign patent applications claiming the benefit of priority thereof, (2) said United States Patent Application and all continuations and divisions thereof (including further continuations and divisions such as, but not limited to, continuations of continuations and divisions of continuations), (i) all United States Letters Patent which may be issued and/or granted on all such applications, (ii) all applications for reissues and extensions of and reexamination certificates for all such United States Letters Patent and (iii) all reissues and extensions and reexamination certificates issued for all such United States Letters Patent, and (3) said International Patent Application and all national stage applications, which may be filed in the United States and/or any foreign countries, claiming the benefit of priority thereof (including all continuations, divisions, further continuations and divisions, etc., of said International Patent Application and all continuations, divisions, further continuations and divisions, etc., of any such national stage applications), (i) all foreign Letters Patent which may be issued

and/or granted on all such applications, and (ii) all foreign patent or other intellectual property rights (such as, but not limited to, utility models) derivable from said International Patent Application in accordance with any applicable foreign laws or by treaty, said interest being the entire ownership of said invention and all of said applications, United States Letters Patent (including reissue Letters Patent), extensions and reexamination certificates, foreign Letters Patent, and foreign patent or other intellectual property rights derivable from said International Patent Application to be held and enjoyed by **SEMBIOSYS GENETICS, INC.** and its successors and assigns to the full end of the terms to which said United States Letters Patent (including reissue Letters Patent), extensions and reexamination certificates, foreign Letters Patent, and foreign patent or other intellectual property rights derivable from said International Patent Application may be granted and/or issued, as fully and entirely as the same would have been held and enjoyed by **SYNGENTA PARTICIPATIONS AG** if this sale, assignment, and transfer had not been made.

Signed this

7th day of July, 2003

by


SYNGENTA PARTICIPATIONS AG

UNITED STATESASSIGNMENT

WHEREAS WE, (1) HARM M. DECKERS, (2) GIJS VAN ROOIJEN, (3) JOSEPH BOOTHE, (4) JANIS GOLL, (5) MAURICE M. MOLONEY, whose full post office addresses are (1) 1302 20TH Avenue N.W., Calgary, Alberta, T2M 1G3, Canada, (2) 3223 Bearspaw Drive N.W., Calgary, Alberta, T2L 1T1, Canada, (3) #302, 332 6th Avenue N.W., Calgary, Alberta, T2E 0L9, Canada, (4) 8323 47th Avenue N.W., Calgary, Alberta, T3B 1Z6, Canada, (5) 34 Edgebrook Cove N.W., Calgary, Alberta, T3A 5N5, Canada, have invented certain new and useful improvements in an invention entitled **THIOREDOXIN AND THIOREDOXIN REDUCTASE CONTAINING OIL BODY BASED PRODUCTS** for which an application for United States Letters Patent was filed on July 5, 2001 as serial No.09/897,898.

AND WHEREAS SEMBIOSYS GENETICS INC., a corporation of the Province of Alberta having a place of business at Bay #110, 2985-23rd Avenue N.E., Calgary, Alberta, Canada, T1Y 7L3, has acquired from us the whole right, title and interest for the United States of America and all other countries, at least as of the date of the invention, in and to the said invention and in and to any Letters Patent that may be obtained therefor, and in and to said application,

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of all of which is hereby acknowledged, WE, (1) HARM M. DECKERS, (2) GIJS VAN ROOIJEN, (3) JOSEPH BOOTHE, (4) JANIS GOLL, (5) MAURICE M. MOLONEY, by these presents confirm that we have sold, assigned and transferred and do hereby sell, assign and transfer unto the said SEMBIOSYS GENETICS INC., the full and exclusive right to the said invention in the United States of America and the entire right, title and interest in and to any and all Letters Patent which may be granted therefor, together with the right to claim the benefit of the right of priority provided by the International Convention for the Protection of Industrial Property based on said application for United States Letters Patent.

We agree that we will without further consideration do all such things and execute all such documents as may be necessary or desirable to obtain and maintain patents for said invention and for additions and modifications thereto in any and all countries, and

-2-

to vest title thereto in said assignee, his successors, assigns and legal representatives or nominees.

We hereby authorize and request the Commissioner of Patents and Trademarks to issue said Letters Patent to the said SEMBIOSYS GENETICS INC., the assignee of the entire right, title and interest in and to the same, for his sole use and benefit, and for the use and benefit of his successors and assigns, to the full end of the term for which Letters Patent may be granted as fully and entirely as the same would have been held by us had this assignment and sale not been made.

The undersigned hereby grant the firm of Foley & Lardner (Washington Harbour, 3000 K Street N.W., Suite 500, Washington, D.C., U.S.A. 20007-5143) the power to insert on this assignment any further identification which may be necessary or desirable in order to comply with the rules of the United States Patent and Trademark Office for recordation of this document.

SIGNED this 7th day of July, 2003, at Calgary, Alberta


Witness


HARM M. DECKERS

WITNESS STATEMENT


I, Kimberly Irving, whose full post office address is 27 Country Hills
Link N.W. Calgary, AB. declare and say:

That the signature as shown above is the signature of Harm M. Deckers.

Signed at Calgary, AB this 7th day of July, 2003.


Signature

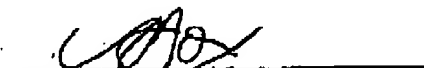
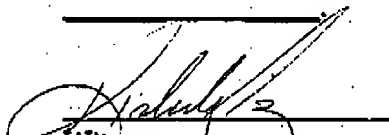
- 3 -

SIGNED this 4 day of July, 2003, at Calgary
AB
Witness
GIJS VAN ROOIJEN

WITNESS STATEMENT

I, Christina Fox, whose full post office address is 228 Emplewood
Rd NE declare and say:

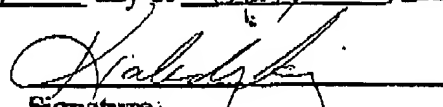
That the signature as shown above is the signature of Gijs van Rooijen.

Signed at Calgary AB this 4 day of July, 2003.
SignatureSIGNED this 7 day of July, 2003, at Nixa
Witness
JOSEPH BOOTHE

WITNESS STATEMENT

I, Kimberly Irving, whose full post office address is 27 Canby Hills
Link. N.W., Calgary AB. declare and say:

That the signature as shown above is the signature of Joseph Boothe.

Signed at Calgary this 7th day of July, 2003.
Signature

SERIUSYS GENETICS

423 258 9986

-4-

SIGNED this 7 day of July, 2003, at Calgary
Alberta

Witness

Janis Goll
 JANIS GOLL

WITNESS STATEMENT

I, Kimberly Irving, whose full post office address is 27 Country
Hills Link N.W., Calgary AB declare

That the signature as shown above is the signature of Janis Goll.

Signed at Calgary, AB this 7 day of July, 2003

Signature

SIGNED this 7 day of July, 2003, at Calgary
Alberta

Witness

Maurice M. Moloney
 MAURICE M. MOLONEY

WITNESS STATEMENT

I, Kimberly Irving, whose full post office address is 27 Country
Hills Link N.W., Calgary AB declare

That the signature as shown above is the signature of Maurice M. Moloney.

Signed at Calgary, AB this 7th day of July

Signature